

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

24981

**FILE:** B-209495

**DATE:** April 22, 1983

**MATTER OF:** Captain William J. Douglas, USA

**DIGEST:**

An Army officer stationed in Alaska claims a cost-of-living allowance on account of his adopted son during the 8-month period immediately preceding entry of the final order of adoption. He is not entitled to the allowance because under the relevant state adoption statutes, a legal adoption was not effected during that period.

This decision addresses a question concerning payment of cost-of-living allowances on account of a member's adopted child during the probationary or pre-adoption custody period of the adoption procedure. Since the child was placed in the member's home without court action or approval during the time for which the allowance is claimed he was not a dependent under the provisions which authorize the cost-of-living allowance, and the member is not entitled to payment.

The question arises from the claim of Captain William J. Douglas, and was submitted by Captain Van J. Seagle, a finance officer of the Department of the Army, Fort Wainwright, Alaska, where Captain Douglas was permanently stationed when the claim was filed. The request was assigned control number 82-25 by the Per Diem, Travel and Transportation Allowance Committee.

On March 11, 1981, Matthew James Douglas, an infant, was placed for adoption in the home of Captain Douglas and his wife Geraldine M. Douglas, by a child-placing agency located in Virginia and authorized to place children for adoption under the laws of that state. On October 5, 1981, the child-placing agency executed a Consent to Adoption, which was subsequently filed in the Superior Court of Alaska, by which the placement agency consented to the adoption of the child by Captain and Mrs. Douglas. A final order of adoption was issued by the Superior Court of Alaska on November 23, 1981. At that time Captain Douglas' cost-of-living allowance was increased to reflect an additional dependent. He now seeks cost-of-living allowance payments

125421

from March 11, 1981, until the date the final order of adoption was entered, since the child was a part of his household and was provided full support during that period.

For purposes of payment of allowances to members of the uniformed services, a member's dependent is defined to include his unmarried adopted child who is in fact dependent on the member. 37 U.S.C. § 401 (1976). We have held that, for the purpose of determining a member's entitlement to dependency benefits on account of an adopted child, it must be shown that a legal adoption has been accomplished according to statute (30 Comp. Gen. 210 (1950)) and under the relevant statutes the child must be, for all intents and purposes, the child of the adopting member during the entire period for which the benefits are claimed. Matter of Tyahur and Okey, 60 Comp. Gen. 170 (1981); 52 Comp. Gen. 675 (1973); and 44 Comp. Gen. 417 (1965).

The record is unclear as to when Captain Douglas moved to Alaska. However, we were advised that the child was placed in the home of the member while he resided in Virginia. Under Virginia law an adoptive child may be placed in the home of prospective parents on a probationary basis following the entry of an interlocutory order of adoption. Thereafter, the child is, for all intents and purposes, the adopted child of the adoptive parents subject, however, to the fulfillment of the probationary period and the provisions of the final order of adoption. Va. Code § 63.1-226 (1980). See also, 44 Comp. Gen. 417 (1965).

However, under certain conditions issuance of the interlocutory order by the court, as well as the probationary period, may be omitted if the child is placed in the home of prospective adoptive parents by a child-placing agency and the agency certifies to the court that the child has continuously lived in the home of the prospective parents for at least 6 months immediately preceding the filing of the petition for final adoption. Va. Code, § 63.1-229. Under this procedure the child remains in the legal custody of the child-placing agency during the preliminary 6-month period, even though he is in the physical custody of the prospective parents and receives full support and care from them.

The agency which placed the child in this case has informally advised us that, in handling adoptions, it follows the latter procedure. The child is placed in the home of the prospective adoptive parents on a 6-month preliminary basis without court action or sanctions. At the end of that period a Consent to Adoption is issued to the court which will enter the final order of adoption.

Under the Virginia statutes governing adoption, when a child is placed for adoption without the entry of an interlocutory order, he becomes the child of the adoptive parents, for all intents and purposes, when the final order of adoption is entered. Va. Code, § 63.1-233.

Since Matthew was placed in the home of Captain Douglas by the child-placing agency in Virginia for the 6-month preliminary period without the issuance of an interlocutory order of adoption in Virginia, a legal adoption had not been accomplished during the period of this claim. Unlike the situation we addressed in 44 Comp. Gen. 417, cited above, in which the child was adopted in Virginia under an interlocutory order, during the probationary or pre-adoption custody period Matthew was not a dependent of Captain Douglas under the definition of that term as used in the statute which authorizes payment of a cost-of-living allowance.

Accordingly, Captain Douglas is not entitled to the claimed allowance on account of his son Matthew prior to November 23, 1981.

*for* *Herry R. Van Cleave*  
Comptroller General  
of the United States